

MEMBERSHIP AGREEMENT

AGREEMENT dated

13 September 2021

BETWEEN **NEWFURN FLOOR COVERINGS LTD** ACN 004 650 668 of 5-9 Hobbs Court, Rowville,
Victoria
("Newfurn")

AND The person whose name and address is detailed in schedule 1
("Member")

RECITALS

- A. Newfurn is incorporated in Victoria and its members primarily comprise floor covering retailers involved in buying and marketing floor coverings and related goods and services.
- B. Newfurn organises on behalf of its members collective buying facilities, the promotion of the Preferred Product Lines and the manufacture of the Preferred Products. In addition, Newfurn also grants licenses to its members to use Newfurn's Trade Marks to sell the Preferred Products and the Preferred Product Lines, and complimentary services.
- C. The Member carries on or will carry on business at the premise/s detailed in schedule 1 **("Licensed Outlets")**.
- D. The relationship between the Member and Newfurn is one of mutual co-operation and respect. The core purpose of the activities of Newfurn, unless otherwise resolved by its members, is to provide services to each of its members to assist them to be more successful as floor covering retailers.
- E. Newfurn recognises that the Member is an independent floor covering retailer which is free to conduct, manage and dispose of its business in any way it sees fit. If in the reasonable opinion of Newfurn the Member's conduct has damaged or may damage the Choices reputation or operations and the Member fails to respond to Newfurn's request to stop such action, the Member is free to continue to carry on such actions by choosing to resign as a member of Newfurn.
- F. Further, as a member of Newfurn, should the Member disagree with or not approve of any actions or proposed plans to be undertaken by Newfurn for its members, the Member is free to express such opinions at general meetings of Newfurn, to solicit or lobby for change or be free to resign as a member of Newfurn.

- G. The Member and Newfurn have agreed to record in this Agreement the terms on which the Member is to apply for shares in Newfurn, the license arrangements relating to the Member's use of the Trade Marks and the Member's trading terms in acquiring the Preferred Products from Newfurn.

OPERATIVE PROVISIONS

1. MEMBERSHIP

- 1.1. On signing this Agreement the Member will apply for, purchase and continue to hold for the period of this Agreement 4,000 ordinary shares ("**Shares**") in Newfurn for a total issue price of \$1.00 each.
- 1.2. In addition to the payment of the issue price for the shares as detailed in clause 1.1, the Member on signing this Agreement must pay an administration fee to Newfurn for the administration and related expenses in processing the Member's application for membership. Further fees and levies are payable by the Member to Newfurn from time to time in accordance with clauses 4.3, 7.1 and 7.4 and the attached Disclosure Document. For the sake of clarity the administration fee is paid once upon joining the group.
- 1.3. The Member acknowledges that it is the objective of Newfurn to promote a strong and viable network of retail floor covering outlets trading under the Trade Marks. In order to achieve this objective Newfurn will from time to time admit new members and grant to the new members a license to use the Trade Marks in accordance with clause 2 of this Agreement. Where an application for membership is received, the Board will consult with the existing nearest member (or members) regarding the application. It is the intention of the Board only to admit new members where the Board in its reasonable opinion is of the view that those existing members who are consulted will not incur any substantial adverse impact in respect of their retail sales as a result of the admission of the new member.
- 1.4. The Member on signing this Agreement agrees:
- (a) to be bound by Newfurn's Articles of Association (as amended from time to time);
 - (b) to hold the Shares subject to the terms and conditions of both Newfurn's Articles of Association and this Agreement; and
 - (c) to be bound by any changes to this Agreement which are approved by an ordinary or special resolution of Newfurn at a general meeting of shareholders.
- 1.5. The Member agrees not to permit any change in effective control of the Board of the Member or change the shareholding or equity of the Member.

2. INTELLECTUAL PROPERTY

- 2.1. Newfurn, subject to clause 2.5, grants to the Member a non-exclusive license for the term of this Agreement to use:

- (a) the Trade Marks solely in the manner directed from time to time by Newfurn, and in any case, solely in connection with the sale of floor coverings from the Licensed Outlets.
- (b) the “Choices” name as part of the Member’s trading or business name under which business is to be conducted at the Licensed Outlets, provided that the Member has given to Newfurn a signed, but undated notice of cessation of its business name, by which notice the Member authorises Newfurn to date and lodge on termination of this Agreement for any reason;
- (c) Newfurn’s signs, emblems, logos, insignia or colour schemes on business stationery, documents, cheques, vehicles, garments or any other goods for use in the operation of the Member’s business from the Licensed Outlets.

2.2. The Member will not without prior written consent of Newfurn:

- (a) include any reference to any Unidentified Outlets in any advertisements by the Member;
- (b) attach to any catalogues, handbills or other printed material provided by Newfurn any other material, including any additional letter or advertising material, other than material that is of an appropriate nature and relevant to carpets or carpet retailing;
- (c) in the Licensed Outlets place or display (including any signs, emblems, lettering, posters, point of sale material, advertising, logos, stands or other like material) the products from Non-Preferred Suppliers so as to give those Non Preferred Suppliers’ products dominance over the display of the Preferred Products;
- (d) disclose to any other person at any time (whether during the term of this Agreement or after) any Confidential Information and without limiting the generality of the foregoing the Member must do or cause to be done everything reasonably possible to keep confidential to itself and Newfurn all Confidential Information.

2.3. The Member agrees that it will:

- (a) do everything reasonable to prevent Newfurn’s Trade Marks or Newfurn’s goodwill and reputation from being adversely affected, and
- (b) immediately comply with any written request from Newfurn to protect Newfurn’s Intellectual Property or to remedy any breach by the Member of its obligations under clause 2.2 or 2.3(a).

2.4. All goodwill and other rights which accrue in respect of the use by the Member of Newfurn’s Trade Marks pursuant to the license conferred under clause 2.1, accrues exclusively for the benefit of Newfurn and the Member has no proprietary or other rights in respect of any goodwill, Trade Marks and any other intellectual property rights.

2.5. Where Newfurn and the Member agree in writing that the Member may operate the

Licensed Outlets (or any of them) as Non-Identified Stores the Member:

- (a) will not be licensed to use the Trade Marks in accordance with clause 2.1 in respect of the Non-Identified Stores; and
- (b) must not in respect of the Non-Identified Stores offer for sale, consignment or otherwise deal with or sell any of the Preferred Product Lines.

In all other respects the obligations of the Member as outlined in this Agreement will continue to apply and be adhered to by the Member.

3. NEWFURN'S OBLIGATIONS

3.1. Newfurn on signing this Agreement will provide or will procure that the following are provided to the Member:

- (a) sample books of the Preferred Product Lines;
- (b) a Choices recommended price list book for the Preferred Product Lines in a format and manner deemed appropriate by Newfurn;
- (c) a list of Choices' suppliers of the Preferred Product Lines; and
- (d) Newfurn's Group Manuals.

3.2. During the term of this Agreement Newfurn will at its discretion provide to the Member from time to time the following services:

- (a) Use its best efforts to maintain the availability of Preferred Product Lines to the Choices Group and to locate and obtain adequate supplies of new product lines at prices which are competitive with other retail suppliers of similar floor coverings;
- (b) Provide reasonable access to expert knowledge, experienced management and office systems appropriate to the Preferred Products Lines;
- (c) Access to training programs that Newfurn considers appropriate for the operation of a floor coverings business by the Member; and
- (d) Marketing for the Choices Group.

3.3. Subject to clause 3.6, Newfurn reserves the right to vary the provision of the services referred to in clause 3.2 to each member having regard to each member's turnover and the geographical location of each member's Licensed Outlets.

3.4. During the term of this Agreement, Newfurn:

- (a) will provide the following to the Member in respect of all meetings organised for members by Newfurn:
 - (i) written notice of the meeting; and

- (ii) a written agenda of the business to be transacted at the meeting in question,

which will be provided not less than fourteen (14) days prior to the date of the meeting.

- (b) may from time to time arrange for meetings or conferences (for marketing, training and other presentations) for its members at the member's expense (unless otherwise advised by Newfurn) and the Member agrees to attend such meetings or conferences where requested by Newfurn, and pay to Newfurn its share of the total Costs of the said meetings and conferences if requested to do so.

3.5. At all meetings, the Member will be entitled to speak on any matters that have been proposed for such consideration by the members of Newfurn.

3.6. Subject to the provisions of this Agreement, Newfurn agrees not at any time during the term of this Agreement to do any act or thing that materially discriminates against any member or group of members, in favour of any other member or group of members.

4. OPERATIONAL

4.1. Unless otherwise agreed in writing by Newfurn, the Member will immediately on signing this Agreement at the Member's expense:

- (a) erect in a manner approved by Newfurn all signage required by Newfurn to show that the Member is a licensed member of the Choices Group;
- (b) ensure that the Licensed Outlets are painted in a manner approved by Newfurn in accordance with Newfurn's approved colour scheme and will to the fullest extent possible, use all other signs, emblems, logos, insignia and advertising materials provided by or as subsequently directed by Newfurn;
- (c) adopt staff uniforms and stationery in a manner consistent with that approved from time to time by Newfurn for use by the Member in the Licensed Outlets; and
- (d) connect telephone, fax facilities, internet and such other office facilities to a standard required by Newfurn and maintain those facilities for the term of this Agreement.

4.2. During the term of this Agreement the Member must unless authorised in writing by the Board:

- (a) at all times keep the Licensed Outlets including all shop, store and other areas adjoining them in a clean and hygienic condition;
- (b) present and maintain the Licensed Outlets to the standard and quality determined from time to time by Newfurn (including such refurbishment as may be required by Newfurn in accordance with the then current image for the Choices Group);
- (c) attend all training programs convened by Newfurn in accordance with clause 3.2(c);

- (d) maintain adequate insurance, including public liability insurance (incorporating product liability risk), workers' compensation insurance and fire insurance for its business;
- (e) not join or become a member of or have any financial interest (whether direct or indirect) in any association, group, company or organisation (other than Newfurn) which concerns the joint buying, selling, marketing or advertising of floor covering products or associated goods;
- (f) not to offer for sale, consignment or otherwise deal with or sell any of the Exclusive Choices Products other than for retail sale to the public from the Member's Licensed Outlets. Without limiting the generality of the above, the Member agrees not to sell or make available (whether on consignment or any other basis) any of the Exclusive Choices Products to any other floor covering retailer or to any person who it is reasonable to suspect may on sell the Exclusive Choices Products;
- (g) not to sell or make available any Preferred Product Line to:
 - (i) any floor covering retailer; or
 - (ii) any other person,who, it is reasonable to suspect, may on sell the Preferred Product Line;
- (h) not to conduct or operate (whether in respect of the Licensed Outlets or Unidentified Outlets) a direct billing account with any Preferred Supplier.

4.3. Newfurn may from time to time impose:

- (a) a levy on the Member on terms and conditions as Newfurn reasonably determines desirable for Newfurn's funding requirements, which levy is to be imposed by Newfurn on all members which conduct business under the Choices Group using the Trade Marks;
- (b) a levy on the Member determined by Newfurn on a geographical basis where the majority of Newfurn members in the relevant geographical area have approved the imposition of the levy for a specific purpose.

The member agrees to pay to Newfurn any such levies in accordance with Newfurn's trading terms. If the levies received exceed Newfurn's requirements, Newfurn may retain the surplus funds to further Newfurn's objectives or apply credit or offer any surplus funds pro-rata against any amounts owed by the Member to Newfurn.

4.4. If Newfurn implements an integrated computer network or a uniform accounting procedure for its members or other like system, the Member agrees:

- (a) to acquire the necessary equipment to allow the Licensed Outlets to be connected to that network or to comply with the uniform accounting procedures for all members of Newfurn; and

- (b) to maintain that equipment and adhere to the operational requirements to ensure the utilisation of the network or the accounting system for the benefit of all members.

4.5. The Member acknowledges that any services, benefits or privileges provided to it by Newfurn under this Agreement are to be used exclusively by the Member at its Licensed Outlets and not for any other business conducted by the Member. The Member acknowledges that its primary responsibility is to maximise retail sales of the Preferred Product Lines at the Licensed Outlets. The parties agree that nothing in this clause limits the operation of the Member's business as carried on at the date of this Agreement to the extent that:

- (a) within the Licensed Outlets the Member has other business operations which are complementary to the retail sale of floor coverings (for example the sale of floor rugs or window furnishings);
- (b) the other business operations referred to in paragraph (a) are confined to a single section of the Licensed Outlets; and
- (c) the display of the products relating to the other business referred to in paragraph (a) are not displayed in a way which in the opinion of Newfurn dominates the business operations carried on by the Member at the Licensed Outlets.

4.6. The parties agree that, subject to clause 13.3, the Member is free to continue or to open Unidentified Outlets which are not identified or held out as forming part of the Choices Group. Prior to opening an Unidentified Outlet the Member must inform Newfurn in writing of the location of the proposed Unidentified Outlet. Further the Member undertakes not to sell the Preferred Product Lines from Unidentified Outlets.

5. CONDUCT OF MEMBER'S BUSINESS

5.1. The Member will ensure compliance and best practice with respect to management of its employees and contactors including, but not limited, to:

- (a) ensuring employees are properly employed on a full time, part time or casual basis;
- (b) taking reasonable steps to ensure that, where temporary labour hire or similar is used, proper payments are being made to employees of the labour hire provider;
- (c) maintaining proper and accurate employee records (e.g. with respect to wages, leave, superannuation);
- (d) ensuring compliance with applicable legislation or industrial instruments (e.g. a modern award or enterprise agreement), including but not limited to, payment of minimum wages and entitlements;
- (e) issuing all employees with legally compliant employment agreements;
- (f) ensuring employees have a valid visa or right to work in Australia and are not engaged illegally.

5.2. The Member warrants that it will:

- (a) at all times strictly comply with applicable legislation and regulations including but not limited to:
 - (i) the *Competition and Consumer Act 2010* and all applicable State fair trading legislation;
 - (ii) the *Fair Work Act 2009* and related regulations;
 - (iii) migration and immigration legislation;
 - (iv) industrial instruments or modern awards which provide for employee wages or entitlements;
 - (v) equal opportunity and discrimination legislation;
 - (vi) occupational health and safety legislation;
 - (vii) taxation and superannuation legislation; and
 - (viii) any other applicable legislation and regulations relating to the conduct of its business from the Licensed Outlets;
- (b) obtain at its own expense all required licences and permits.
- (c) use its best endeavors to properly operate the business at the Licensed Outlets:
- (d) where the Member is a company:
 - (i) ensure that the Nominated Manager has required skills, expertise and training to conduct the business at the Licensed Outlets;
 - (ii) is suitably competent, acts with due care and skill and devotes his or her complete attention to the conduct of the business at the Licensed Outlets; and
 - (iii) has the relevant authorisations, registration, certification, permits, visas and licenses required by law to conduct the business at the Licensed Outlets;
- (e) comply with the conditions of all of Newfurn's plans and schemes at any time for in-store promotions, window dressing, stock displays and market development generally.

5.3. The Member will in a proper and businesslike manner carry on business and at all times maintain an adequate display of the Preferred Product Lines to give prominence at the Licensed Outlets to Newfurn's Preferred Product Lines. To this end the Member must:

- (a) keep the Licensed Outlets open during normal business hours,

- (b) appropriately display all floor coverings (including the Preferred Product Lines) in all Licensed Outlets including having the Licensed Outlets appropriately cleaned, lit, managed, staffed, and all proper systems in place;
- (c) properly maintain adequate books of account;
- (d) give prompt, courteous, friendly and efficient service to all customers and in all dealings with customers and suppliers, act fairly and ethically; and
- (e) provide the highest levels of service quality to all customers.

5.4. The Member:

- (a) is to use its best endeavours to support Newfurn's Preferred Suppliers concerning the purchase of products for sale at the Licensed Outlets;
- (b) must not commit Newfurn to any liability or obligation, or use Newfurn's name to obtain finance or credit for the Member's business without Newfurn's prior written authority;
- (c) acknowledges that except as provided to the contrary in this Agreement the Member must **not** represent to anyone that:
 - (i) the Member or its business is owned or operated by Newfurn or has any other association with Newfurn, save for being a member of the Choices Group;
 - (ii) Newfurn has any financial or proprietary interest in the Member's business; or
 - (iii) the Member is Newfurn's agent, employee or consultant.

5.5. Where the Board is of the opinion that, having regard to the geographical location of the Licensed Outlets and the potential market for sales of the Preferred Products from the Licensed Outlets, the Member is not:

- (a) achieving sufficient retail turnover levels; or
- (b) purchasing adequate quantities of the Preferred Product Lines (being carpet as distinct from underlay);

in either case to justify the continued support and provision by Newfurn of the services to the Member in accordance with this Agreement, the Board may specify any reasonable turnover and purchase targets in respect of the Preferred Product Lines for the Member.

5.6. The Member will have such period as determined by the Board (being not less than 3 months) to achieve the turnover and purchase targets specified by Newfurn under clause 5.5. Where those turnover and purchase targets are not achieved by the Member in the period provided by the Board, the Member will be deemed to be in breach of this Agreement.

- 5.7. The Member must comply with the *Privacy Act 1988* (Cth), including the Australian Privacy Principles and the Credit Reporting Privacy Code, in connection with any personal information, sensitive information, credit information and credit eligibility information collected by or provided to it in conducting the Membership and providing the Preferred Products.

6. MEMBER'S TRADING

- 6.1. The Member agrees to provide Newfurn with any financial information which may assist Newfurn to provide or renew a suitable credit facility in either case concerning the Member's future or existing indebtedness to Newfurn or its Preferred Suppliers. The Member must at its own cost provide such security (including personal guarantees, charges over company assets, bank guarantees and mortgages of real property) as required from time to time by Newfurn in its absolute discretion.

- 6.2. The Member acknowledges that:

- (a) Newfurn may grant credit to the Member, but if credit is granted it may be withdrawn at any time if:
 - (i) Newfurn is satisfied on reasonable grounds that the Member is or may be unable to meet any of its financial commitments to Newfurn; or
 - (ii) credit insurance for the Member in accordance with clause 6.1 is refused, cancelled or varied;
- (b) Newfurn may withdraw any credit granted to the Member and demand immediate payment of all moneys due and payable if a resolution to that effect is made by the Board;
- (c) if the Member defaults in meeting its commitments to Newfurn as they fall due (whether acting as collection agent or in its personal capacity), Newfurn may demand payment in full of all moneys due and payable.

- 6.3. The Member appoints Newfurn to act as its agent from time to time on the Member's behalf to purchase the Preferred Products. Where the Member wishes to acquire the Preferred Products, the Member must, subject to clause 6.4, place the order on Newfurn's account with the Preferred Supplier. Newfurn is authorised by the Member:

- (a) to make arrangements with the Preferred Suppliers as to the terms and conditions for the supply of the Preferred Product Lines;
- (b) to cancel any order or contract made with a Preferred Supplier by the Member.

The Member will remain liable to Newfurn for Costs that Newfurn incurs in respect of all purchases of Preferred Products made by or on behalf of the Member with a Preferred Supplier.

- 6.4. Nothing in this Agreement obliges Newfurn to confirm or place any orders on behalf of the Member. Newfurn may at any time terminate the Member's authorisation to use Newfurn's

account facilities with Preferred Suppliers in which case the Member may negotiate its own trading terms with the Preferred Suppliers.

6.5. Without limiting the Member's right to claim against any Preferred Supplier, the Member will have no claim of any nature against Newfurn for:

- (a) any delay in the delivery of, or refusal or inability to supply the Preferred Product Lines; or
- (b) in any way arising out of any representations or warranties (whether express or implied by law to the extent permitted by the law) concerning the Preferred Products or the Preferred Product Lines.

6.6. The Member:

- (a) agrees that Newfurn accepts no risk to or loss of any products purchased pursuant to clause 6;
- (b) acknowledges that at no time does ownership or risk in respect of the merchandise supplied to the Member vest in Newfurn. Where Newfurn is in possession of or control of any merchandise ordered by the Member, it does so in its capacity as bailee or agent (as the case may be) of the Member;
- (c) agrees to comply with Newfurn's Group Manuals (which include the accounts reconciliation procedure) in respect of the Member's purchase of Preferred Product Lines and advertising material from Newfurn. Newfurn's Group Manuals:
 - (i) specify the time and manner for payment of all accounts and invoices issued or sent by Newfurn (whether acting as collection agent or in its personal capacity);
 - (ii) entitle Newfurn to charge the Member interest on overdue accounts and the interest rate may be set and varied by Newfurn according to the amount of time that accounts have been outstanding;
 - (iii) entitle Newfurn to withhold rebates, dividends, discounts or other credits from the Member;
- (d) acknowledges that nothing in this Agreement affects any retention of title rights of any suppliers to the Member.

6.7. The Member will pay to Newfurn in accordance with Newfurn's Group Manuals:

- (a) any general levy imposed in accordance with clause 4.3;
- (b) all purchases of the Preferred Product Lines by Newfurn on the Members behalf in accordance with clause 6;
- (c) any general advertising levy in accordance with clause 7.1(a);
- (d) any special Promotion levies in accordance with clause 7.1(b);

- (e) the Documentation Fee in accordance with the terms specified in the Schedule;
- (f) any Costs which are incurred by Newfurn on behalf of the Member.

6.8. The Member must provide to Newfurn on request in the form prescribed from time to time by Newfurn:

- (a) the gross retail sales figure of floor coverings for the relevant period;
- (b) the aggregate purchases of floor coverings made by the Member during the relevant period from all specified suppliers of floor coverings; and
- (c) if necessary under clause 6.1, a copy of the Members financial statements (including profit and loss and balance sheet) as at the end of each financial year, or other specified period.

6.9. Newfurn agrees to do every act or thing reasonably possible to keep confidential to itself all information provided to it by the Member under this clause 6.

6.10. Without in any way limiting Newfurn's rights, the Member agrees that Newfurn may set off (in whole or in part) any amounts which are due or become due on any account whatever by Newfurn to the Member against any amounts which are due or become due by the Member to Newfurn on any account whatever. For the purpose of clarity, the parties confirm that Newfurn's right of set off under this clause is not affected by and continues to apply where the Member is a body corporate despite the appointment of a receiver, manager, liquidator, administrator or other like appointment or, where the Member is a person, despite the bankruptcy of the Member or any form of arrangement concerning the Member's financial affairs.

7. MARKETING

7.1. To finance Newfurn's marketing activities (undertaken pursuant to clause 3.2(d)), the Member agrees to pay to Newfurn:

- (a) a monthly general advertising levy as determined from time to time by a majority of the members in the Member's marketing region (the boundaries of which are determined by Newfurn from time to time) for the conduct of general marketing promotions in the region by Newfurn in accordance with clause 7.3;
- (b) a levy to pay for any Special Promotion which is conducted by Newfurn in accordance with clause 7.4, the amount of which levy is to be determined from time to time by a majority of the members affected by, or involved in, the Special Promotion in question.

7.2. As part of the Choices Group, the Member:

- (a) authorises Newfurn at the Member's cost to place or remove the Member's name as a member of the Choices Group into or from any telephone directories (white and yellow), online or otherwise circulating in the area in which the Licensed Outlets are located;

- (b) will not, without the prior written approval of Newfurn, advertise any special promotional plans, including exclusive merchandise, in any media within 7 days prior to the commencement of a Promotional Period to be conducted by Newfurn;
- (c) agrees to take part in all general promotions as referred to in clause 7.3 and any Special Promotion as referred to in clause 7.4;
- (d) will comply with any reasonable direction by Newfurn and in line with its Social Media Policy and procedures in respect to the marketing of products on social media and on-line.

7.3. Newfurn may from time to time conduct general promotions for the Choices Group or the Preferred Product Lines using press, radio, television or other media announcements. General promotions may for example involve the publication of catalogues or similar printed material including the Member's name and addresses of the Licensed Outlets. The Member agrees:

- (a) to participate in all of Newfurn's general promotions;
- (b) where the general promotion involves the publication and distribution of any catalogue or other printed material, to order a sufficient quantity of such material properly to service its distribution area (as determined by Newfurn);
- (c) to display prominently in all Licensed Outlets all promotional material required by Newfurn for the general promotions.

7.4. In addition, where Newfurn proposes to conduct any special regional promotion ("**Special Promotion**") and the majority of members in the geographical area which is to be the subject of the proposed Special Promotion agree that they will benefit from the Special Promotion, the Member agrees:

- (a) to pay to Newfurn an equitable proportion of the total Costs of conducting the Special Promotions as reasonably determined by Newfurn;
- (b) to participate in the Special Promotion;
- (c) where the Special Promotion involves the publication and distribution of any catalogue or other printed material, to order a sufficient quantity of such material properly to service its distribution area (as determined by Newfurn);
- (d) to display all promotional material required by Newfurn for the Special Promotion.

7.5. The Member may in writing request a complete or partial exemption from participation in any proposed promotions to be conducted by Newfurn. The Board (or its authorised delegate) will consider any such request in its absolute discretion and either grant or refuse the request. Exemption will only be granted in exceptional circumstances.

7.6. The Member acknowledges that the reasonable Costs of administering and auditing the fund will be paid for from the contributions of the members to the fund.

8. MEMBERSHIP CODE OF CONDUCT

- 8.1. The Member acknowledges that Newfurn has a substantial commitment to the reputation and growth of the Choices Group. As such the Member's conduct can have a significant impact on the reputation of the Choices Group and the value of the businesses conducted by other Newfurn members. Newfurn has developed the Membership Code and Group Manuals in recognition of the foregoing. Accordingly, the Member agrees to comply with:
- (a) the Membership Code and Newfurn's Group Manuals as amended from time to time by Newfurn; and
 - (b) resolutions of the members of Newfurn passed at any general meeting of Newfurn.
- 8.2. The services, benefits or privileges provided to the Member by Newfurn under this Agreement will be exclusively used by the Member at the Licensed Outlets and not for the conduct by the Member of its business at the Unidentified Outlets or any business which is not associated with Newfurn.
- 8.3. The Member agrees that it will not do anything which may be detrimental to the reputation of Newfurn, the Choices Group or another member of Newfurn or Newfurn's suppliers.

9. INDEMNITY

- 9.1. The Member indemnifies and holds Newfurn harmless in respect of any demands, claims, Costs, damages or other liabilities which may be made against or incurred by Newfurn (including all such costs or expenses incurred in defending any relevant proceedings) concerning:
- (a) the Member's failure to comply with the legislation set out in clauses 5.1 and/or clause 5.2;
 - (b) any negligent act or omission of the Member or Nominated Manager;
 - (c) any claim against Newfurn in relation to any entitlement, tax, withholdings, superannuation, levy, registrations, premium or insurance;
 - (d) the operation of the Member's business or arising out of any services, training, assistance or advice given by Newfurn pursuant to this Agreement; or
 - (e) any representations or comments made by the Member or any of its directors, employees or agents; or
 - (f) any negligence or willful act or omission by the Members or any of its directors, employees or agents.
- 9.2. This indemnity in clause 9.1 survives termination of this Agreement.

10. RESTRAINT AND NON-SOLICITATION

- 10.1. The Member acknowledges that Newfurn has invested substantial time and money in the development of the systems and accounting procedures for the operation of Newfurn's

collective buying and promotional systems. On joining Newfurn the Member has obtained access to those systems and accounting procedures. In recognition of that investment by Newfurn the Member agrees that during the term of this Agreement and following the termination of this Agreement, the Member, and if a company, its directors in their personal capacity, must:

- (a) not disclose any confidential information concerning Newfurn or its members to any person for the use by, or which may be used by, any person whatsoever; and
- (b) for a period of 12 months from the termination of this Agreement, not participate in the establishment of a collective buying or other co-operative scheme which may operate in competition to Newfurn or its members; and
- (c) not, at any time solicit any members or any entities which were members of Newfurn to join a collective buying or other co-operative scheme which may operate in competition to Newfurn or its members;
- (d) for a period of 12 months following the termination of this Agreement the Member must not employ, seek to employ or engage in any capacity any employee or agent of Newfurn or any other Newfurn members without first obtaining the written consent of Newfurn or relevant Newfurn member; and
- (e) subject to clause 13.2 and 13.3, the Member will remain a Member of the Choices Group for a minimum of twenty-four (24) months from the date of this Agreement in accordance with the terms of this Agreement and cannot exercise its right under clause 13.4 during that period.

10.2. In the event that Newfurn provides a Loan to the Member then, in consideration of Newfurn providing the Loan, and subject to clause 13.2 and 13.3, the Member agrees that:

- (a) notwithstanding clause 10.1(e), during the term of the Loan the Member will remain a Member of the Choices Group in accordance with the terms of this Agreement and cannot exercise its right under clause 13.4 during that period; and
- (b) on repayment of the Loan, the Member will remain a Member of the Choices Group for an additional two (2) years from the date of the full repayment of the Loan and cannot exercise its right under clause 13.4 during that period ("**Restraint Period**");
or
- (c) if the Member sells its business that it conducts at the Licensed Outlet before the expiration of the Restraint Period, and subject to clause 11, then it will make it a condition of any sale of its business that the purchaser will agree to be similarly restrained and remain a Member of the Choices Group for the Restraint Period or the remainder of the Restraint Period.

11. ASSIGNMENT, SALE OF BUSINESS AND TRANSFER

11.1. Neither party may assign, transfer or otherwise deal with (including encumber) its rights or benefits under this Agreement unless it has the informed written consent of the other party.

11.2. Save for clause 11.3 there is no restriction on the Member selling its business. Notwithstanding that, the Member acknowledges that Newfurn has the option of terminating the Agreement under clause 13 in these circumstances.

11.3. Where a Member notifies Newfurn in accordance with clause 15.2 that it wishes to sell its business and Newfurn does not exercise its option under clause 15.3 then Newfurn must within forty two (42) days after receiving a Member's notification under clause 15.2 give to the Member written notice either that:

(a) consent to the transfer is withheld (specifying which of the provisions in clause 11.3 are not satisfied by the proposed transferee); or

(b) consent to the transfer is granted,

otherwise consent to the transfer is deemed to have been granted by Newfurn. Without limiting the generality of the above, Newfurn undertakes to admit to the Choices group any proposed purchaser of the business where -

(i) the proposed purchaser is in the reasonable opinion of Newfurn of a suitable financial substance, has a good professional reputation and has the requisite experience to conduct a floor coverings business, in each case to that standard expected of a member of Newfurn;

(ii) Newfurn is able to obtain confirmation that credit insurance cover or a suitable credit facility in either case is available in respect of the proposed purchaser;

(iii) the proposed purchaser has agreed to purchase the Member's shares in Newfurn and also to enter into a membership agreement with Newfurn in the then current form applying at the date of the proposed sale of business;

(iv) in the event of an assignment of this Agreement or a new membership Agreement being entered into by the buyer of the Member's business, any applicable disclosure period under the Franchising Code of Conduct, has expired; and

(v) the assignee pays the Documentation Fee and any of Newfurn's other Costs in connection with the sale of Business.

12. GUARANTEES

12.1. Where the Member is a company, the Member if requested by Newfurn must procure that the shareholders of the Member and its directors execute a guarantee of the Member's obligations under this Agreement and in respect of the trading debts incurred by the Member with Newfurn in such form as required by Newfurn in its absolute discretion.

12.2. The provisions of this clause do not limit or affect:

(a) any security or guarantees that may be required in accordance with clause 6.1; or

- (b) any retention of title or similar claim by Newfurn, its Preferred Suppliers or any of the Member's other suppliers.

13. TERM OF MEMBERSHIP AND TERMINATION

13.1. This Agreement commences on the date of this Agreement and continues until terminated in accordance with clause 13.2 or 13.3, or clause 13.4 or with the written agreement of both the Member and Newfurn.

13.2. Newfurn may immediately terminate this Agreement and it will be deemed to be a fundamental breach of this Agreement if:

- (a) Newfurn gives written notice ("**Notice of Breach**") to the Member which specifies;
 - (i) the breach by the Member;
 - (ii) that Newfurn intends to terminate this Agreement if the breach is not remedied;
 - (iii) what Newfurn requires to be done by the Member to remedy the breach and allowing the Member a reasonable time to remedy the breach (which need not be more than 30 calendar days);

and the Member fails to remedy the breach in accordance with the Notice of Breach.

13.3. Newfurn may terminate this Agreement by giving the Member no less than 7 days' written notice of the proposed termination and the ground for it, if:

- (a) where the Member is a corporation and: it becomes insolvent, it goes into liquidation, a petition is presented or an order is made or an effective resolution is passed for the winding up of the Member or a meeting is summoned or convened to consider whether to wind up the Member;
- (b) the Member sells or ceases operating its principal undertaking;
- (c) where the Member is a natural person or is one member of a partnership, that person-
 - (i) becomes bankrupt; or
 - (ii) is convicted of an indictable offence;
- (d) a Receiver or a Receiver and Manager or an Administrator of the Member's property is appointed or proposed;
- (e) where the Member is convicted of a serious offence;
- (f) where the Member voluntarily abandons the Member's business or the relationship with the member group;

- (g) the Member operates the Members business in a way that endangers public health and safety; and
- (h) where the Member is fraudulent in its operation of the Member's business.

13.4. The Member may terminate this Agreement on 30 days prior written notice to Newfurn.

14. COOLING OFF

14.1. The Member may terminate this Agreement by written notice to Newfurn not more than 14 days from execution of this Agreement.

14.2. Clause 14.1 does not apply to renewal or change of scope of existing Member agreements.

14.3. If this Agreement is transferred between the Member to a person who becomes the new member ("**New Member**") for the purposes of this Agreement without a new membership agreement being entered into by the New Member and Newfurn:

- (a) The New Member may, by written notice to the Member and Newfurn in accordance with subclause 14.3(b), do all of the following:
 - (i) cease to be the member for those purposes;
 - (ii) if the Member can become the member for those purposes again, cause the Member to do so;
 - (iii) if there was an agreement between the New Member and the Member for the purposes of the transfer ("**Transfer Agreement**"), terminate the transfer agreement.
- (b) A notice under subclause 14.3(a) must be given within whichever of the following periods ends earlier:
 - (i) the period of 14 days starting on the day after the New Member becomes the member for the purposes of this Agreement;
 - (ii) the period ending on the day the New Member takes possession and control of the Member's business.
- (c) If, by notice given under subclause 14.3(b), the New Member ceases to be the member for the purposes of this Agreement, Newfurn must, within the period of 14 days starting on the day after the notice was given, repay all payments (whether of money or of other valuable consideration) made by the New Member to Newfurn under this Agreement less any monies owing by the New Member to Newfurn and less the reasonable costs of advertising and selecting and training the New Member and Newfurn's legal costs (which the New Member acknowledges will be calculated as set out in the Schedule). Newfurn will have no other obligation to the New Member. If the New Member has not paid Newfurn sufficient funds to cover the amounts set out in the Schedule, the New Member must pay Newfurn any shortfall.

- (d) If, by notice given under subclause 14.3(b), the New Member terminates the Transfer Agreement, the Member must, within the period of 14 days starting on the day after the notice was given, repay all amounts (whether of money or of other valuable consideration) made by the New Member to the Member under the Transfer Agreement. The Member may deduct from the amount repaid under this clause the Member's reasonable expenses if the expenses or their method of calculation have been set out in the Transfer Agreement.

14.4. If a Member terminates this Agreement pursuant to clause 14.1, Newfurn must repay all payments made by the Member to Newfurn under this Agreement, less the reasonable costs of advertising, selecting and training of the Member and the Documentation Fee (which Newfurn acknowledges will be calculated as set out in the Schedule). Newfurn will have no other obligations to the Member.

14.5. The Member, on termination of this Agreement, agrees to sell and immediately transfer the Shares to such person as may be nominated by the Board for a total consideration of \$1.00 each share. For this purpose, the Member irrevocably and unconditionally **APPOINTS** the Directors from time to time of Newfurn jointly and severally to be its lawful attorneys and to do any of the following in its name and on its behalf:

- (a) to execute under hand or hand and seal any documents which alone or together with other documents are intended to transfer the Shares to any person nominated by the Board;
- (b) to provide receipts and discharges for all purchase moneys payable in respect of the Shares in accordance with this clause;

and the Member agrees:

- (c) that this power of attorney is irrevocable and unconditional;
- (d) that everything which the attorney does in pursuance of the powers under this clause will be valid and effective and may be relied upon by any other person; and
- (e) to allow or ratify (if requested by Newfurn) any acts done by the attorney in relation to the powers granted above.

14.6. In addition to the provisions of clause 14.5, on the termination of this Agreement for any reason the license granted under clause 2.1 will immediately terminate and the Member must immediately at its own cost:

- (a) cease to use or exploit in any way whosoever any of the Intellectual Property. All rights granted herein with respect to the Trade Marks and any other Intellectual property will cease;
- (b) immediately stop using and return to Newfurn all Confidential Information and samples of Newfurn's exclusive Preferred Product Lines and not retain (whether in documents, electronic or in any other medium) any copies, extracts or notes compiled by reference to that Confidential Information;

- (c) remove from each of the Licensed Outlets and cease using all business stationery, documents, cheques, goods, vehicles, garments or any other things any names, signs, emblems, logos, insignia or colour schemes associated with Newfurn or the Choices Group or which might mislead or deceive any person into believing that the Licensed Outlets continue to be operated as a member of the Choices Group or are in any way associated with Newfurn or the Choices Group;
- (d) lodge any necessary forms with Australian Securities & Investments Commission office at Newfurn's option to transfer to Newfurn's nominee or to terminate all business names or company names used by the Member which include the Trade Marks or the word "Choices" (or any of them);
- (e) in the case of any redeemable preference shares held by the Member, not to withdraw in whole or in part during the period of two (2) years after the Termination Date, any redeemable preference shares issued to it by Newfurn; Provided that after completion of the transfer of the ordinary shares above Newfurn will pay interest on the redeemable preference shares as declared by the Board from time to time; Provided further that Newfurn may deduct from such interest any moneys due to Newfurn by the Member;
- (f) repay any moneys owing to Newfurn (whether on account of trading or for contributions, levies, fees, or other amounts determined by Newfurn pursuant to this Agreement) unless Newfurn otherwise consents in writing, and loans made by the Member to Newfurn or any moneys due to the Member on account of its transfer of shares will not be credited or offset against any other moneys owing by it to Newfurn.

14.7. If required by Newfurn the Member will co-operate with and authorises Newfurn and its agents:

- (a) to remove the Member's name and telephone number from any telephone listings, social media or online platforms which include reference to the Trade Marks;
- (b) to enter into the Licensed Outlets to remove at the Member's cost all identification signs, emblems, logos, insignia or colour schemes which might mislead or deceive any person into believing that the Licensed Outlets continue to be Choices' outlets or are in any way associated with Newfurn or the Choices Group.

14.8. The Member acknowledges that Newfurn has invested substantial time and money in the development of the store display hardware, equipment and systems. On termination of this Agreement, Newfurn shall have the right but not the obligation to purchase the store display hardware, stands, equipment and samples used in the Member's business by:

- (a) delivering a written notice to the Member at any time within two (2) weeks after termination to purchase all or part of the display stands, equipment and samples;

and the Member agrees:

- (b) the purchase price shall equal to the written down tax depreciated value of the items to be purchased by Newfurn;

- (c) if Newfurn and the Member cannot agree on the purchase price to be valued in the above manner, within two (2) weeks following Newfurn's exercise of its option to buy, the purchase price shall be determined by a chartered accountant appointed by the President for the time being of the Branch of the Institute of Chartered Accountants in Australia of the State the laws of which govern this Agreement on the request of any party who will determine the written down value as an expert, not as an arbitrator, and whose determination will be final under this clause.
- (d) all costs incurred in the valuation will be borne equally by both parties.

15. OPTION TO PURCHASE

- 15.1. Where the Member wishes to sell its business conducted at the Licensed Outlets the Member must notify Newfurn in accordance with clause 15.2 and, subject to clauses 15.6 and 15.7, grant to Newfurn the option:
- (a) to purchase the Member's business and the assets used by the Member in the conduct of its business at the Licensed Outlets; and
 - (b) to take an assignment of the property lease/s of the Licensed Outlets,
- in each case on the terms of this clause, before selling the business to any other person.
- 15.2. The Member is not permitted to sell its business or assets used at the Licensed Outlets without first notifying Newfurn in writing of:
- (a) the name of the proposed purchaser and, where the purchaser is a company, details of the directors and shareholders of the proposed purchaser; and
 - (b) the terms of the offer to purchase (including the cash purchase price to be paid on completion).
- 15.3. Newfurn, within five (5) working days of receipt of a notice under clause 15.2, must advise the Member whether Newfurn wishes to exercise the Option. Where it exercises its option, Newfurn must purchase the assets and the business conducted by the Member at the Licensed Outlets (as the case may be):
- (a) where the Member has only been a member of Newfurn for less than twelve months and purchased its business from a previous member of Newfurn, at the sale price for the assets and business as fixed in the original sale agreement between the Member and the previous member from which the Member bought the assets and business (plus any reasonable allowance for improvements in the assets of the business undertaken after the member acquired the assets from the previous member - for example, building or showroom alterations); and
 - (b) in all other circumstances, at the bona fide sale price specified in the notice under clause 15.2.
- 15.4. Where Newfurn does not exercise the Option, the Member is free to sell the assets and business for a period of 60 days from the date of the notice under clause 15.2 provided that

the sale is on terms no more favourable to the purchaser than specified in the notice under clause 15.2.

15.5. Where Newfurn exercises the Option:

- (a) completion will take place within thirty days of Newfurn notifying the Member that it wishes to purchase the assets and business;
- (b) the closing of the sale and purchase shall take place at a location and date determined by Newfurn;
- (c) the Member must assign to Newfurn (or as directed by Newfurn) the property lease/s of the Licensed Outlets;
- (d) Newfurn will be entitled to set off against the purchase price for the assets and business any amounts then owed to Newfurn by the Member and also to pay from the purchase price any amount due to the Member's trade creditors; and
- (e) the parties will enter into a separate agreement for such purchase.

15.6. The Member is not obliged to satisfy clause 15.1 where Newfurn, in its reasonable opinion, is satisfied that the intended purchaser is:

- (a) a family member of the operator of the Member's said business; or
- (b) an employee of the Member's said business, who has been an employee for not less than six months prior to the date of the offer to purchase.

15.7. The Member is not obliged to satisfy clause 15.1 where the proposed sale of shares represents a restructuring of the interests of existing shareholders.

16. DISPUTE RESOLUTION

16.1. The parties agree that should any dispute arise in respect of any of the provisions of this Agreement, the Member will be entitled to request that the Board nominate two non-executive directors to review and consider the matter.

16.2. A request by the Member to the Board under this clause must be in writing and specify the issues in dispute or the complaints made by the Member in sufficient detail to allow due consideration by the Board. If the Board determines in its absolute discretion that there is genuine dispute, it will refer the matter for consideration to two non-executive directors of the Board, one nominated by Newfurn and the other nominated by the Member.

16.3. If the two non-executive directors nominated determine it appropriate, a time and place for a meeting with the Member will be determined and the Member will have the opportunity to address the directors on the matters in dispute or the complaint which had been raised by the Member. The determination of the dispute by the two non-executive directors nominated will be conclusive.

16.4. Despite the provisions of this clause, if a dispute arises between parties to this Agreement,

either party may at any time elect to use the following procedure:

- (a) the complainant must tell the other party in writing –
 - (i) the nature of the dispute;
 - (ii) what outcome the complainant wants; and
 - (iii) what action the complainant thinks will settle the dispute.
- (b) The parties must then agree to –
 - (i) clearly communicate the background facts leading to or causing the dispute;
 - (ii) set out clearly what action is required to settle the dispute;
 - (iii) select a way of resolving the dispute and explain why that way of resolving the dispute can be said to be a fair resolution of the dispute; and
 - (iv) identify, if the dispute is resolved, how the resolution of the dispute has or could enhance the business relationship between the parties for the future. In particular, by identifying specific means of avoiding such disputes arising between the parties in the future;
- (c) If the dispute is not resolved in accordance with clause (a) within 3 weeks, either party may refer the matter to an ADR practitioner for an ADR process;
- (d) If the parties cannot agree who should be the ADR practitioner, either party may ask the Ombudsman to appoint an ADR practitioner.
- (e) The ADR process must be conducted in Australia and the ADR practitioner may decide the time and the place for ADR process.
- (f) The parties must attend the ADR process and try to resolve the dispute.
- (g) A party is taken to have attended the ADR process if the party is represented at the ADR process by a person who has the authority to enter into an agreement to settle the dispute on behalf of the party.
- (h) The parties to the ADR process will bear:
 - (i) the costs of the ADR process equally, unless agreed otherwise; and
 - (ii) their own costs of attending the ADR process.

17. ACKNOWLEDGMENTS

17.1. The Member acknowledges and represented to Newfurn that prior to signing it has

- (a) been given a copy of the Code, the Disclosure Document, the Key Facts Sheet and

any related document or agreements at least 14 days before the Member entered into this Agreement or made any non-refundable payment (whether of money or of other valuable consideration) to Newfurn in connection with this Agreement;

- (b) been advised by Newfurn to carefully read and ensure that it understands the provisions of this Agreement;
- (c) received, read and had a reasonable opportunity to understand the Code, the Disclosure Document, the Key Facts Sheet and any related document or agreements;
- (d) been advised by Newfurn to seek independent and specific advice from a taxation adviser concerning the likely taxation consequences of investment in the business pursuant to this Agreement and, accordingly, has not received from or relied upon any representations by Newfurn, its officers servants or agents whom the Member acknowledges are not qualified to provide taxation advice; and
- (e) been advised by Newfurn to seek independent legal and business advice with respect to this Agreement and all other aspects of the business.

17.2. The success of the business depends upon the Member's own efforts and, accordingly, the Member assumes responsibility for the success or failure of the business. Newfurn does not guarantee any return on investment or profit to the Member.

18. NOTICE

18.1. A party giving notice or notifying under this Agreement must do so in writing:

- (a) directed to the recipient's address, in the case of Newfurn as detailed at the beginning of this Agreement and in the case of the Member as detailed in schedule 1, as varied from time to time by written notice; and
- (b) hand delivered or sent by prepaid post or facsimile to that address.

In the case of a facsimile, the facsimile number for Newfurn is (03) 9850 9499 and in the case of the Member the facsimile number as detailed in schedule 1, as varied by either party from time to time by written notice to the other.

18.2. A notice given in accordance with clause 17.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post 3 days after the date of posting; or
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within eight business hours after that transmission, the recipient informs the sender that it has not received the entire notice.

19. INTERPRETATION

19.1. Definitions

The following words have these meanings in this Agreement (and the recitals) unless the contrary intention appears:

“ADR practitioner” means a conciliator or mediator as provided in the Code;

“ADR process” means a conciliation or mediation as provided in the Code;

“Agreement” means this agreement and any Schedule or Annexure;

“Articles of Association” means the articles of association of Newfurn as amended from time to time;

“Board” means the board of directors of Newfurn as constituted from time to time;

“Choices Group” means the trading group constituted by Newfurn and its members using the Trade Marks;

“Code” means the Franchising Code of Conduct and any amendments to it from time to time;

“Confidential Information” means all of Newfurn’s trade secrets and financial, marketing and technical information, ideas, concepts, know-how, technology, processes, procedures, policies, manuals, costing books, publications, material information and knowledge which is confidential or of a sensitive nature;

“Costs” means any cost, charge, expense, outgoing, payment or other expenditure of any nature and where appropriate includes Newfurn’s administrative costs, fees and disbursements payable to contractors, consultants, suppliers, and includes the Documentation Fee and Legal Costs, to the extent permitted to be collected under the Franchising Code of Conduct;

“Disclosure Document” means the disclosure document prepared by Newfurn in accordance with the Code;

“Documentation Fee” means the amount which the Member must pay to Newfurn for Newfurn’s Costs relating to the preparation, negotiation or execution of this Agreement as set out in the Schedule;

“Exclusive Choices Products” being products not available to retailers or wholesalers outside the Choices Group and being those lines identified from time to time in the Choices recommended price listing as exclusive products of the Choices Group;

“Intellectual Property” means the Trade Marks and all Confidential Information, copyright, designs and all other intellectual property rights owned or used at any time by Newfurn in the context of the Choices Group;

“Key Facts Sheet” means the key fact sheet prepared by Newfurn in accordance with the Code;

“Licensed Outlets” means in respect of the Member the premise/s detailed in schedule 1;

“Loan” means a loan in the sum of that indicated at Schedule 1 and provided by Newfurn to assist the Member to finance its operations or the purchase of the business that is conducted at the Licensed Outlet;

“Membership Code” means the code of conduct for members of Newfurn as varied from time to time, the current version being set out in schedule 2;

“Newfurn’s Group Manuals” means any manuals issued by Newfurn to its members (as amended from time to time), including, but not limited to the accounting and administration (Operations) manual and marketing manual;

“Nominated Manager” means where the Member is a company, the person designated in schedule 1 as the nominated manager for the Member;

“Non-Identified Stores” means a floor covering or other store or retail businesses operated or owned by the Member in accordance with clause 2.5;

“Non-Preferred Suppliers” means all product suppliers other than a Preferred Supplier;

“Ombudsman” means the Australian Small Business and Family Enterprise Ombudsman;

“Option” means the option granted under clause 15.1;

“Preferred Supplier” means those suppliers nominated from time to time by Newfurn as being a supplier of the Preferred Product Lines;

“Preferred Products” or **“Preferred Product Lines”** means those products and goods authorised by Newfurn from time to time as Choices labelled and/or Exclusive Choices Products;

“Promotion Period” means the period during which Newfurn undertakes or proposes to undertake a marketing campaign under this Agreement;

“Tax Depreciated Value” means the written down value of the items calculated in accordance with Income Tax Assessment Act;

“Trade Marks” means all logos, symbols, get up, trade names, service marks, brand names, business names and similar rights (whether registered or unregistered) and all associated goodwill owned by Newfurn.

“Unauthorised Product Lines” means those products which are not manufactured or produced by Preferred Suppliers;

“Unidentified Outlets” means a floor covering or other store or retail businesses operated or owned by the Member, not being the Licensed Outlets.

19.2. In this Agreement unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) other grammatical forms of defined words and expressions have corresponding meanings;
- (c) words importing persons include firms, bodies corporate, unincorporated associations or authorities;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and assigns;
- (e) headings are for ease of reference only and do not affect the construction of this Agreement;
- (f) a reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a permanent and visible form;

20. GENERAL

20.1. This Agreement will be governed by the laws of Victoria and the parties hereby submit to the jurisdiction of the Courts of that State and courts competent to hear appeals from them.

20.2. Each party must:

- (a) use reasonable efforts to do all things necessary or desirable to give full effect to this Agreement; and
- (b) refrain from doing anything that might hinder performance of this Agreement.

20.3. Where the Member is in partnership, each of the partners covenants that he will be jointly and severally liable in respect of all duties, obligations, responsibilities and liabilities of the Member under this Agreement.

20.4. The parties covenant with each other that if a party is a trustee it will be bound in its capacity as a trustee or in its several capacities as trustees and also in its personal capacity.

20.5. This Agreement (including its schedules):

- (a) constitutes the entire agreement between the parties as to its subject matter; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

Except for any forms completed by the Member and returned to Newfurn in relation to its application for membership and application for credit which documents are critical in deciding whether the Member is a suitable applicant and the information contained in those

documents has been relied upon by Newfurn and the Member warrants the accuracy and completeness of that information.

- 20.6. The failure of Newfurn at any time to require performance of any obligation on the Member under this Agreement is not a waiver of Newfurn's rights
- (a) to insist on the performance of, or claim damages for breach of, that obligation unless Newfurn acknowledges in writing that the failure is a waiver; and
 - (b) at any time to require performance of that or any other obligation under this Agreement.
- 20.7. Part or all of any provision of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions of this Agreement continue in force.

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Sample Only - Do Not Sign

EXECUTED as an Agreement

SIGNED for NEWFURN FLOOR COVERINGS)	
LIMITED by an authorised officer in the)	
presence of)	
.....
Signature of Witness	Signature of Officer
.....
Name of Witness (print)	Name of Officer (Print)

	Office held

Where the Member is a company:

SIGNED for the MEMBER by an authorised)	
officer in the presence of)	
.....
Signature of Witness	Signature of Officer
.....
Name of Witness (print)	Name of Officer (Print)

	Office held

Where the Member is an individual or partnership:

SIGNED for the MEMBER in the presence of))	
..... Signature of Witness Signature of Member
..... Name of Witness (print)	

Sample Only - Do Not Sign

SCHEDULE 1

[Please complete outlet details]

Member's Details:	Name: Address: Telephone Number: Facsimile Number:
Nominated Manager: (in the case of a corporate member)	Name:
Guarantor's Details:	Name: Address: Name: Address: Name: Address:
Licensed Business Details:	Name: Address: Name: Address:
Loan	\$ NIL
Mortgage Security Fee	Generally split evenly between the Member and Newfurn for the preparation of documents for mortgage security, however no more than \$1,000 will be covered by Newfurn.

SCHEDULE 2**MEMBERSHIP CODE**

- As a member of Choices, I agree not to engage in any business practice which may jeopardise the professional standing and goodwill of the group or any individual member. I am particularly conscious of the need to ensure that...
 - The quality of my workmanship will be of the highest standard.
 - In respect to product, I will ensure my customer's expectations are fully met.
 - I will deliver a level of customer service that enhances the reputation of the group.
 - In the use of the logo, I will treat it with respect and in accordance with the guidelines laid down for its usage.
 - I will comply with applicable legislation and regulations.
- In my dealings with fellow Choices members, I will protect their interests by...
 - Not on selling group lines to non-Choices retailers.
 - Ensuring I will pay for purchases from fellow members within seven days of receipt, unless otherwise agreed.
 - Assisting fellow members with reasonable stock requests.
 - Subject to the requirements of the Trade Practices Act my dealings with fellow members will always be conducted in a spirit of mutual co-operation.
- As a Choices member, and in the marketing of my store, I will always endeavour to:
 - Present a retail store of a high standard.
 - Ensure all local advertising strongly features "Choices" and that such advertising presents a credible, positive image and in no way damages the standing of Choices.
- I recognise that suppliers are our partners and in my dealings with them will always be honest, and ethical, and expect the same standards of them. I will also strongly support the preferred suppliers, and particularly those that support the group's co-operative advertising programs.
- My relationship with the central office will be maintained on a professional basis by promptly responding to requests for information and settling accounts within the group's trading terms. I will always endeavour to attend group meetings and will fully support group activities.

**NEWFURN FLOOR COVERINGS LIMITED
ABN 63 004 650 668 ACN 004 650 668
("Newfurn")**

AND

**THE PERSON WHOSE NAME AND ADDRESS IS DETAILED IN SCHEDULE 1
("Member")**

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**MEMBER'S/GUARANTOR'S STATEMENT
(THE MEMBER AND GUARANTOR MUST COMPLETE)**

Member: _____

Guarantor: _____

Franchisor: _____

- Relevant Documents:**
1. Disclosure Document;
 2. Membership Agreement; and
 3. Franchising Code of Conduct.

1. I/We are the Member (or a duly authorised representative of the Member) and, where applicable, the Guarantor.
2. I/We acknowledge having received the Relevant Documents at least 14 days before entering into the Membership Agreement to which this Statement is attached.
3. Before entering into the Membership Agreement to which this Statement is attached I/we have received, read and had a reasonable opportunity to understand the Relevant Documents.

DATED the _____ day of _____ 20_____

..... Signed for the Member

..... Signed by the Guarantor

Sample Only - Do Not Sign

SOLICITOR'S CERTIFICATE

Member:		
Guarantor		
Franchisor:		
Solicitor:	Name	
	Firm	
	Address	

PART A

1. I am a Solicitor and hold a current practising certificate.
2. I have been instructed by the Member and, where applicable, the Guarantor, to advise in regard to the grant of a Newfurn Membership and the Membership Agreement to which this Certificate is attached.
3. I have advised the Member and, where applicable, the Guarantor, about the nature and contents of the Membership Agreement to which this Certificate is attached.
4. I am satisfied that the Member and, where applicable, the Guarantor, understand and agree to the nature and contents of the Membership Agreement to which this Certificate is attached.

DATED the _____ day of _____ 20
..... Solicitor

The Member and Guarantors must sign Part B if they have sought legal advice:

PART B

1. I/We are the Member (or a duly authorised representative of the Member) and, where applicable, the Guarantor.
2. I/We have been recommended to seek advice from a Solicitor in regard to the grant of a Newfurn Membership and the Membership Agreement to which this Certificate is attached.
3. I/We have received advice from a Solicitor about the grant of a Newfurn Membership and the Membership Agreement to which this Certificate is attached. I/We understand the nature and content of the Membership Agreement and the explanation provided by my/our Solicitor.

DATED the _____ day of _____ 20
..... Signed for the Member
..... Signed by the Guarantor

The Member and Guarantors must sign Part C if they elect not to obtain legal advice:

PART C

1. I/We are the Member (or a duly authorised representative of the Member) and, where applicable, the Guarantor.
2. I/We have been recommended to seek advice from a Solicitor in regard to the grant of a Newfurn Membership and the Membership Agreement to which this Certificate is attached.
3. I/We have elected not to seek advice from a Solicitor about the Membership Agreement to which this Certificate is attached.

DATED the _____ day of _____ 20
..... Signed for the Member
..... Signed by the Guarantor

BUSINESS ADVISER'S CERTIFICATE

Member:		
Guarantor		
Franchisor:		
Business Advisor:	Name	
	Firm	
	Address	

PART A

1. I am a business adviser instructed by the Member and, where applicable, the Guarantor, to advise in regard to the grant of a Newfurn Membership.
2. I have advised the Member and, where applicable, the Guarantor, about the nature and contents of the Membership Agreement and likely business and related consequences of entering into the Membership Agreement to which this Certificate is attached and in relation to the conduct of the Newfurn Membership.
3. I am satisfied that the Member and, where applicable, the Guarantor, understand and agree to the nature and contents of the Membership Agreement and likely business and related consequences of entering into the Membership Agreement to which this Certificate is attached.

DATED the _____ day of _____ 20____
..... Business Adviser

The Member and Guarantors must sign Part B if they have sought business advice

PART B

1. I/We are the Member (or a duly authorised representative of the Member) and, where applicable, the Guarantor.
2. I/We have been recommended by Newfurn to seek advice from a business adviser in regard to the grant of a Newfurn Membership and the Membership Agreement to which this Certificate is attached.
3. I/We have obtained advice from a business adviser about the grant of a Newfurn Membership and the Membership Agreement to which this Certificate is attached. I/We understand the nature and content of the Membership Agreement and the explanation provided by my/our business adviser.

DATED the _____ day of _____ 20____
..... Signed for the Member
..... Signed by the Guarantor

The Member and Guarantors must sign Part C if they elect not to obtain business advice

PART C

1. I/We are the Member (or a duly authorised representative of the Member) and, where applicable, the Guarantor.
2. I/We have been recommended by Newfurn to seek advice from a business adviser in regard to the grant of a Newfurn Membership and the Membership Agreement to which this Certificate is attached.
3. I/We have elected not to seek advice from a business adviser about the Membership Agreement to which this Certificate is attached.

DATED the _____ day of _____ 20____
..... Signed for the Member
..... Signed by the Guarantor

ACCOUNTANT'S CERTIFICATE

Member:		
Guarantor		
Franchisor:		
Accountant:	Name	
	Firm	
	Address	

PART A

1. I am an accountant/taxation adviser instructed by the Member and, where applicable, the Guarantor, to advise in regard to the grant of a Newfurn Membership.
2. I have advised the Member and, where applicable, the Guarantor, about the investment requirements for and financial risks and likely tax consequences of entering into the Membership Agreement to which this Certificate is attached and in relation to the conduct of the Newfurn Membership.
3. I am satisfied that the Member and, where applicable, the Guarantor, understand and agree investment requirements for and financial risks and likely tax consequences of entering into the Membership Agreement to which this Certificate is attached.

DATED the _____ day of _____ 20____
 Accountant

The Member and Guarantors must sign Part B if they have sought accounting/tax advice

PART B

1. I/We are the Member (or a duly authorised representative of the Member) and, where applicable, the Guarantor.
2. I/We have been recommended by Newfurn to seek advice from an accountant/tax adviser in regard to the grant of a Newfurn Membership and the Membership Agreement to which this Certificate is attached.
3. I/We have obtained advice from my/our accountant/taxation adviser about the grant of a Newfurn Membership and the Membership Agreement to which this Certificate is attached. I/We understand the nature and content of the Membership Agreement and the explanation provided by my/our tax adviser.

DATED the _____ day of _____ 20____
 Signed for the Member
 Signed by the Guarantor

The Member and Guarantors must sign Part C if they elect not to obtain accounting/tax advice

PART C

1. I/We are the Member (or a duly authorised representative of the Member) and, where applicable, the Guarantor.
2. I/We have been recommended by Newfurn to seek advice from an accountant/tax adviser in regard to the grant of a Newfurn Membership and the Membership Agreement to which this Certificate is attached.
3. I/We have elected not to seek advice from an accountant/business adviser about the Membership Agreement to which this Certificate is attached.

DATED the _____ day of _____ 20____
 Signed for the Member
 Signed by the Guarantor

VOLUNTARY RELIANCE CERTIFICATE

I/We the Member and, where applicable, the Guarantor, certify that the following statements, representations or warranties (not being contained in the Membership Agreement) have been made by Newfurn, its officers, servants or agents which I/we have relied on in my/our decision to enter into the Membership Agreement to which this Statement is attached (if space is insufficient then attach a separate piece of paper detailing the representations):

[Member to complete, if applicable]

(a)

DATED the _____ day of _____ 20____

.....Signed for the Member

.....Signed by the Guarantor

Sample Only - Do Not Sign

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